

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS GESUALDI, LOUIS :
BISIGNANO, ANTHONY PIROZZI, :
DOMINICK MARROCCO, FRANK :
FINKEL, JOSEPH FERRARA, MARC :
HERBST, THOMAS PIALI, and DENISE :
RICHARDSON, as Trustees and Fiduciaries :
of the Local 282 Welfare, Pension, Annuity, :
Job Training, and Vacation and Sick Leave :
Trust Funds, :
Plaintiffs, :
-against- :
T&M SPECIALTIES, LTD., :
Defendant. :
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ORDER

09-CV-049 (ENV) (VVP)

VITALIANO, D.J.

Plaintiffs Thomas Gesualdi, Louis Bisignano, Anthony Pirozzi, Dominick Marrocco, Frank Finkel, Joseph Ferrara, Marc Herbst, Thomas Piali, and Denise Richardson brought this action, in their capacity as trustees and fiduciaries of the Local 282 Welfare, Pension, Annuity, Job Training, and Vacation and Sick Leave Trust Funds, against defendant T & M Specialties, Ltd., pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq. ("ERISA"). Plaintiffs allege that defendant has failed to pay contributions to the funds as required by the terms of a collective bargaining agreement between defendant and Local 282.

Plaintiff filed the Complaint on January 7, 2009. Defendant, after waiving service, filed an answer on March 26, 2009. On January 15, 2010, after defendant repeatedly failed to attend hearings scheduled before Magistrate Judge Viktor V. Pohorelsky, the Court adopted the

Magistrate Judge's report and recommendation that the answer be stricken, entered a default judgment against defendant, and referred the action to Magistrate Judge Pohorelsky to conduct an inquest.

Following a review of the relevant submissions, Magistrate Judge Pohorelsky issued a second Report and Recommendation ("R&R") on February 18, 2011, recommending that plaintiffs be awarded damages of \$87,574.19 for unpaid benefit fund contributions; interest of \$64,392.77 through February 15, 2011, plus \$43.19 per day to the date judgment is entered; liquidated damages of \$64,392.77, plus \$43.19 per day to the date judgment is entered; audit costs in the amount of \$350.00; and attorney's fees and costs in the amount of \$20,466.90. No objections to Judge Pohorelsky's R&R have been timely filed.

In reviewing a report and recommendation, the court "may accept, reject, or modify, in whole or in part, the findings and recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Moreover, in order to accept a magistrate judge's report and recommendation where no timely objection has been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (quoting Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)).

After careful review of all the evidence in the record below, the Court finds Magistrate Judge Pohorelsky's R&R to be correct, comprehensive, well-reasoned, and free of any clear error. The Court, therefore, adopts the R&R in its entirety as the opinion of the Court. Accordingly, for the reasons stated in the R&R, plaintiffs are awarded \$87,574.19 for unpaid benefit fund contributions, interest in the amount of \$66,249.84, liquidated damages in the amount of \$66,249.84, audit costs in the amount of \$350.00, and attorney's fees and costs in the amount of

\$20,466.90, for a total of \$240,890.97.

The Clerk is directed to enter Judgment and to close this case.

SO ORDERED.

Dated: Brooklyn, New York
March 30, 2011

s/ENV

ERIC N. VITALIANO
U.S.D.J.